

Lance Investigation Service, Inc. and Special and Superior Officers Benevolent Association. Case 2-CA-17822

July 23, 1981

DECISION AND ORDER

Upon a charge filed on February 5, 1981, by Special and Superior Officers Benevolent Association, herein called the Union, and duly served on Lance Investigation Service, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint and notice of hearing on February 19, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. On March 3, 1981, the Regional Director issued an order amending complaint. Copies of the charge and complaint, as amended, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 5, 1981, following a Board election in Case 2-RC-18753, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about January 23, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 13, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and submitting affirmative defenses.

On May 15, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on May 19, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

¹ Official notice is taken of the record in the representation proceeding, Case 2-RC-18753, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV ElectroSystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits its refusal to bargain but challenges the Union's certification on the basis that the Board erred in certifying the Union as the exclusive bargaining representative of Respondent's employees. In the Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues previously considered in the underlying representation case and, also, that no factual issues in the case warrant a hearing.

Our review of the record herein, including the record in Case 2-RC-18753, discloses, *inter alia*, that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted among the employees in the stipulated unit on August 4, 1980, and the tally of ballots furnished the parties after the election showed 107 votes cast for, and 67 against, the Union. There were five challenged ballots, an insufficient number to affect the results. Respondent filed timely objections which alleged that improper campaign literature distributed by the Union affected the results of the election. Specifically, Respondent claimed that three handbills contained threats of job loss and that two of the three handbills contained substantial misrepresentations of fact. Respondent further claimed that a fourth document gave the false impression that the Union had some affiliation with the Government and that the Government favored the Union. On September 16, 1980, the Regional Director issued her Report on Objections and Recommendations in which she recommended that the objections be overruled and that the Board issue a certification of representative. On September 26, 1980, Respondent filed exceptions to the Regional Director's report and reiterated the allegations and contentions set forth in its objections. On January 5, 1981, following consideration of the entire record in the case, the Board issued a Decision and Certification of Representative adopting the Regional Director's findings and recommendation.²

On January 8, 1981, the Union, by letter, requested that Respondent recognize and bargain collectively with it. On January 23, 1981, Respondent, by letter, refused to recognize and bargain with the Union. In its answer to the complaint, as amended, Respondent admits that it has refused to bargain collectively with the Union. It offers as affirmative defenses the same arguments concerning campaign literature raised in its objections to the election and

² Not published in volumes of Board Decisions.

its exceptions to the Regional Director's Report on Objections. It thus appears that Respondent is attempting to raise herein issues which were raised in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

1. THE BUSINESS OF RESPONDENT

Respondent, a New York corporation, with an office and place of business in Bronx, New York, is engaged in providing protection services throughout the New York City metropolitan area. Annually, in the course and conduct of its business, Respondent provides services valued in excess of \$50,000 to enterprises located within the State of New York, each of which enterprises annually sells and ships products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of New York, or annually purchases and receives products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Special and Superior Officers Benevolent Association is a labor organization within the meaning of Section 2(5) of the Act.

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security guards, including sergeants, employed by the Employer at its various locations throughout the New York metropolitan area, but excluding field supervisors, office clerical employees, supervisors.

2. The certification

On August 4, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 2, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 5, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about January 8, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 23, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since January 23, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Lance Investigating Service, Inc., set forth in section III, above, occurring in

connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Lance Investigation Service, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Special and Superior Officers Benevolent Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time security guards, including sergeants, employed by the Employer at its various locations throughout the New York metropolitan area, but excluding field supervisors, office clerical employees, supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 5, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 23, 1981, and at all times thereafter, to bargain collectively with

the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lance Investigation Service, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Special and Superior Officers Benevolent Association as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time security guards, including sergeants, employed by the Employer at its various locations throughout the New York metropolitan area, but excluding field supervisors, office clerical employees, supervisors.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Bronx, New York, office copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Special and Superior Officers Benevolent Association as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time security guards, including sergeants, employed by the Employer at its various locations throughout the New York metropolitan area, but excluding field supervisors, office clerical employees, supervisors.

LANCE INVESTIGATION SERVICE, INC.